United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 16, 2008

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT:		
	First Student, Inc.	347-8010-5000
	Case 4-CA-36224	420-1209
		420-1783
	Teamsters Local 115 (First Student)	518-4040-5050
	Case 4-CB-10168	524-5090-5033
		536-2569-3300
		548-6010

The Region submitted these cases for advice as to: (1) whether the Employer and incumbent Union had effectively merged a single-location bargaining unit into a multi-location bargaining unit when the Employer received notice that the Union had lost majority support in the single-location unit; and, if not, (2) whether the Employer and incumbent Union violated Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2) respectively by thereafter continuing to negotiate and entering into a multi-location collective-bargaining agreement.

We conclude that the Region should dismiss the charges in these cases, absent withdrawal, because the Employer and Union had agreed to merge the relevant bargaining unit into an appropriate multi-location unit, and the Union retained majority support in that merged unit. Therefore, Section 10(j) relief is unwarranted.

FACTS

In 1987, Laidlaw Transit, Inc. ("Laidlaw") began providing school bus services to the Council Rock and the Cheltenham School Districts in Pennsylvania. On March 23, 1988, Laidlaw voluntarily recognized Teamsters Local 115 ("Local 115") as the exclusive collective-bargaining representative of a unit of the Council Rock drivers, aides, and mechanics. The parties negotiated a collective-bargaining agreement effective September 1, 1988 through June 30, 1991. A few months later, Local 115 made a showing of majority support from the Cheltenham unit, and Laidlaw applied the contract to those employees as well. When that agreement expired, the parties negotiated a single successor agreement covering the Council Rock and Cheltenham employees, which remained effective through June 30, 1998.

In 1992, Laidlaw succeeded Ryder Transportation as the contractor for the Bristol School District, where Local 115 was the certified collective-bargaining representative. Laidlaw

recognized Local 115 and negotiated an agreement covering the Bristol employees, also effective through June 30, 1998. Then, in June 1997, Laidlaw and Local 115 entered into a single collective-bargaining agreement covering Council Rock, Cheltenham, and Bristol, effective through June 30, 2003.

In 2003, First Student, Inc. ("First Student") outbid Laidlaw for the Council Rock contract. First Student took over the existing Council Rock facilities, hired the existing workforce, and recognized Local 115 as the employees' bargaining representative. First Student and Local 115 negotiated a collective-bargaining agreement, effective September 1, 2003 through June 30, 2008. At the same time, Laidlaw executed a collective-bargaining agreement with Local 115 covering the Cheltenham and Bristol District drivers and mechanics, also effective through June 30, 2008.

On May 18, 2007, after another union filed a petition to represent the Council Rock employees, and the Region conducted an election, the Board certified Local 115 as the representative for the Council Rock unit. Then, in October 2007, First Student acquired Laidlaw through a stock purchase and agreed to adopt Laidlaw's collective-bargaining agreement with Local 115 covering the Cheltenham/Bristol bargaining unit.

The following year, on May 15, 2008,[1] First Student and Local 115 began negotiations for new agreements. Local 115 proposed that a single agreement once again be negotiated for all three school districts. First Student agreed on May 16. Also on May 16, United Electrical, Radio and Machine Workers Local 155 ("UE") filed a representation petition covering the Council Rock employees. The Region informed the UE that it would dismiss the petition because the Council Rock contract barred a petition until it expired on June 30. The UE withdrew the petition on May 22.

Also on May 22, a Council Rock employee gave the First Student contract manager at Council Rock a copy of an eight-page petition, signed by 91 of the 169 employees in the Council Rock bargaining unit, which stated that the signatories no longer wished to be represented by Local 115 and wished to be represented instead by the UE. The petition further requested that First Student refrain from negotiating a new agreement with Local 115. The employee also faxed the eight-page petition to First Student's Cincinnati headquarters. On the same day, a UE representative faxed a copy of the petition to Local 115; however, that copy was missing a page and therefore contained only 83 signatures.

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[1] All dates are in 2008 unless otherwise indicated.

During the next few weeks, some employees who had signed the petition signed other documents indicating that they had changed their minds and again supported Local 115. Meanwhile, First Student and Local 115 continued to negotiate, and on June 25 reached agreement on a new collective-bargaining agreement covering a Council Rock, Cheltenham, and Bristol merged unit. As of that date, 83 out of 170 Council Rock employees had signed the UE's petition and not disavowed their signatures. On June 26, the UE collected additional signatures that reflected the support of a majority of the 170 Council Rock employees. Later that day, the employees in the Council Rock, Cheltenham, and Bristol Districts ratified the new collective-bargaining agreement.

On July 1, the UE filed another petition with the Region, seeking to represent the Council Rock employees. On July 3, the UE filed the charges in the instant cases, alleging that First Student violated Section 8(a)(1), (2), and (3) and Local 115 violated Section 8(b)(1)(A) and (2) by negotiating and maintaining a collective-bargaining agreement after receiving evidence that Local 115 no longer represented a majority of the employees in the Council Rock unit.

ACTION

We conclude that First Student and Local 115 effectively merged the Council Rock bargaining unit into the Cheltenham/Bristol bargaining unit before receiving notice that a majority of the Council Rock employees no longer supported Local 115. Accordingly, the May 22 UE petition was not supported by a majority of the employees in the agreed-upon unit. First Student and Local 115 therefore did not violate the Act by continuing to negotiate and reaching agreement upon a successor collective-bargaining agreement.

The Board has long held that an employer and union can agree to merge separately certified or recognized bargaining units into a single overall unit,[2] so long as the merged unit is "an" appropriate unit.[3] Under this "merger doctrine," bargaining

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[2] See, e.g., Albertson's, Inc., 307 NLRB 338, 339 (1992) (dismissing a decertification petition for a unit of customer service employees at three stores, where the parties had agreed to merge that unit into a larger unit of grocery store employees at all seven Spokane stores); Wisconsin Bell, 283 NLRB 1165, 1165-66 (1987) (dismissing a decertification petition for a single-facility unit that the parties merged into a multi-facility unit).

[3] See Raley's, 348 NLRB 382, 554-555 (2006) (statewide unit "is an appropriate one for collective-bargaining purposes"); Gibbs & Cox, 280 NLRB 953, 954 (1986), petition to review dismissed as

history is relevant in two respects: (1) when, in the absence of a clear expression of intent to merge units, it sheds light on whether the parties intended to merge previously separate units;[4] and (2) in determining whether the merged unit chosen by the parties is an appropriate bargaining unit.[5]

Thus, in Arrow Uniform Rental, the Board found a multi-plant unit "*an* appropriate bargaining unit[,]" in light of an eight-year multi-location bargaining history, even though there was considerable individual plant manager autonomy, different terms and conditions of employment, and an absence of employee contact and interchange between plants.[6] The Board held that although "the petitioned-for single facility units may also be appropriate, or perhaps even more appropriate," that "does not negate the appropriateness of the historical multilocation unit."[7]

Here, the parties agreed on May 16 to negotiate a new collective-bargaining agreement that would cover the Council Rock, Cheltenham, and Bristol School Districts and then proceeded to do just that. Furthermore, Local 115's bargaining history with First Student's predecessor, from 1988 until 2003, indicates that the multi-location unit covering all three school districts

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moot 904 F.2d 214 (4th Cir. 1990) (multi-location unit "is an appropriate unit for bargaining").

[4] Raley's, 348 NLRB at 554-555 (bargaining history "manifested" parties' intent to create single, statewide bargaining unit for drug clerks, despite separate contract for drug clerks at one store); Gibbs & Cox, 280 NLRB at 954 (four-year bargaining history on multi-location basis indicated an intent to merge Virginia office into overall unit with New York office).

[5] See Gibbs & Cox, 280 NLRB at 954 (merged unit was an appropriate unit based largely on history of multi-facility bargaining, and therefore not appropriate to consider community of interest factors relevant to an initial unit determination). See also Arrow Uniform Rental, 300 NLRB 246, 248-249 (1990) (decertification petition for single-location units dismissed in light of eight-year bargaining history in multi-location unit); Met Electrical Testing Co., 331 NLRB 872 (2000) (representation petition for a single-facility unit dismissed, where the employer purchased the assets of a company that had a long history of collective bargaining on a multi-location basis).

[6] 300 NLRB at 248-249 (emphasis in original).

[7] Id. at 249.

is *an* appropriate unit.[8] Indeed, the facilities in these districts have always been treated as a single multi-location unit whenever they have been owned by the same entity. Because there is a clear agreement to bargain on a multi-location basis, and a multi-location unit is an appropriate unit, even if not the only appropriate unit, we conclude that the relevant bargaining unit at the time that First Student and Local 115 received the UE petition was the overall multi-location unit. Thus, the May 22 UE petition did not indicate an actual loss of majority support in the appropriate unit, and neither First Student nor Local 115 violated the Act by thereafter continuing to bargain and entering into a collective-bargaining agreement. Accordingly, the Region should dismiss the charges in this case, absent withdrawal.[9]

B.J.K.

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[8] Buy Low Supermarket, Inc., 131 NLRB 23 (1961), is distinguishable. In that case, the Board concluded that a bargaining history of brief duration and not based on a Board certification did not warrant a finding that a multi-employer unit was the *only* appropriate unit and directed an election in the petitioned for single-store unit. Id. at 25-26.

[9] If we had determined that the Council Rock facilities constituted the only appropriate unit, First Student would have violated Section 8(a)(1) and (2) by continuing to negotiate with Local 115 after receiving the UE's petition on May 22. See, e.g., Dura Art Stone, Inc., 346 NLRB 149, 149, n.2 (2005) (employer violated the Act by continuing to negotiate and execute a collective-bargaining agreement when it had knowledge of an employee disaffection petition establishing the union's loss of majority support). First Student also arguably would have violated Section 8(a)(1), (2), and (3) by executing the collective-bargaining agreement, since its initial unlawful bargaining with a minority union would have tainted any subsequent showing of majority status by Local 115. Ryder Integrated Logistics, Inc., 329 NLRB 1493, 1493, n.1 (1993) (Section 8(a)(2) recognition before a representative complement was hired tainted any subsequent showing of majority support). Local 115, on the other hand, would not have violated the Act under any circumstances, because it lacked knowledge that it had lost majority status in light of the seven-page petition it received. Clark Equipment Company, 249 NLRB 660, 660-661 (1980) (no Section 8(a)(2) violation where employer "lacked the requisite knowledge" of the incumbent's loss of majority support); Dura Art Stone, 346 NLRB at 149, n.2 (continuing to apply knowledge requirement post-Levitz).